

For purposes of the Illinois sales tax, lessors of tangible personal property under true leases in Illinois are deemed end users of the property to be leased. See 86 Ill. Adm. Code 130.220. (This is a GIL).

March 9, 2000

Dear Xxxxx:

This letter is in response to your letter dated January 7, 2000. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

We are in receipt of your letter dated December 30, 1999, which was in response to our letter of November 10, 1999. We appreciate you and your department taking the time to review our fact pattern and comment on the State's position. Upon reviewing the State's response to our situation, we would like to present additional information for your consideration.

In your letter you have stated, 'If no tangible personal property is leased, then no tax liability is incurred. In other words, if the towers are considered to be real estate, their lease is not subject to tax as immediately described above.'

We agree that in the event that these towers are deemed to be real property, that no sales tax should be collected on the lease charges for such towers. However, in the event that the towers are considered to be tangible personal property, we would like to pose an additional question. Could it be interpreted that our client is not leasing the actual tower structure itself, but instead our client is charging its customers a fee for allowing them access to the towers so that the customers can place their own tangible personal property (i.e. antennae) on the towers?

Additionally, does the Sales and Use Tax Division use property tax listings as the determining factor between real and tangible personal property designations, or could an item be classified differently for sales tax and property tax purposes? We would appreciate any guidance that you can provide for us in regards to these new inquiries.

Should you have any questions regarding this request or desire any further information, please do not hesitate to contact me at #####. Thank you for your assistance and cooperation in resolving this issue. We look forward to your reply.

We are unable to answer your specific questions in the context of a General Information Letter. The questions you ask would be best answered either by having an auditor examine the situation or by you sending in a request for a Private Letter Ruling.

Generally, access fees to intangible personal property, such as Internet access, are not taxable in Illinois. From the limited information set forth in your letter, we are unable to see a distinction between a lease payment for tangible personal property and an access charge for tangible personal property. The following paragraphs discuss leasing in Illinois.

Please note that the State of Illinois taxes leases differently for Retailers' Occupation Tax and Use Tax purposes than the majority of other states. For Illinois sales tax purposes, there are two types of leasing situations: conditional sales and true leases.

A conditional sale is usually characterized by a nominal or one dollar purchase option at the close of the lease term. Stated otherwise, if lessors are guaranteed at the time of the lease that the leased property will be sold, this transaction is considered to be a conditional sale at the outset of the transaction, thus making all receipts subject to Retailers' Occupation Tax.

A true lease generally has no buy out provision at the close of the lease. If a buy out provision does exist, it must be a fair market value buy out option in order to maintain the character of the true lease. Lessors of tangible personal property under true leases in Illinois are deemed end users of the property to be leased. See the enclosed copy of 86 Ill. Adm. Code 130.220. As end users of tangible personal property located in Illinois, lessors owe Use Tax on their cost price of such property. The State of Illinois imposes no tax on rental receipts. Consequently, lessees incur no tax liability.

The above guidelines are applicable to all true leases of tangible personal property in Illinois except for automobiles leased under terms of one year or less, which are subject to the Automobile Renting Occupation and Use Tax found at 35 ILCS 155/1 et seq.

As stated above, in the case of a true lease, the lessors of the property being used in Illinois would be the parties with Use Tax obligations. The lessors would either pay their suppliers, if their suppliers were registered to collect Use Tax, or would self-assess and remit the tax to the Department.

For Retailers' Occupation Tax and Use Tax purposes, the Department does not use property tax listings to determine whether property is classified as real property or tangible personal property.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

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Very truly yours,

Melanie A. Jarvis
Associate Counsel

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Enc.